

**A RESOLUTION
BY CITY UTILITIES COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE THIRD AMENDMENT OF AGREEMENT FOR RIVER/LAKE MANAGEMENT SERVICES FC-6005008018, TO TRANSFER ALL MONIES HELD BY THE ATLANTA REGIONAL COMMISSION IN A PRE-CONTRACT ACCOUNT AND COLLECTED UNDER SAID AGREEMENT TO THE TECHNICAL ASSISTANCE ACCOUNT ADMINISTERED BY THE ATLANTA REGIONAL COMMISSION, AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") entered into an Agreement for River/Lake Management Services ("Services Agreement") for FC-6005008018 with the Atlanta Regional Commission ("ARC"), the Atlanta-Fulton County Water Resources Commission ("AFCWRC"), Cobb County-Marietta Water Authority and DeKalb County (collectively "the Participants") pursuant to Resolution 01-R-0576 and as amended in Resolutions 02-R-2073, 06-R-0058, 06-R-0371, and 06-R-2639; and

WHEREAS, under this agreement ARC was appointed to serve as agent for the Participants to facilitate the release of water from Lake Lanier and Morgan Falls Dam to enable the withdrawal of water from the Chattahoochee River by the Participants for municipal and industrial water supply purposes, such activities being referred to in the Service Agreement as the "project"; and

WHEREAS, the Service Agreement was amended as of January 1, 2003 (the "First Amendment"), and was further amended as of July 1, 2005 (the "Second Amendment"); and

WHEREAS, pursuant to Paragraph 6 of the First Amendment and beginning in 2003, the Participants have been making certain "Pre-Contract" payments to ARC to fund, in part, the Settlement Agreement more particularly described in the First Amendment; and

WHEREAS, ARC has not been required to make water storage payments to the U.S. Army Corps of Engineers from funds in the Pre-Contract account ("Pre-Contract Account") as anticipated; and

WHEREAS, due to an order from the U.S. Court of Appeals, D.C. Circuit, the Settlement Agreement was nullified and the funds in the Pre-Contract Account will never need to be expended as originally anticipated; and

WHEREAS, the Participants are also the Participants pursuant to the Intergovernmental Cost Sharing Agreement for Technical Assistance effective January 1, 2007 (the "Technical Assistance Agreement"), pursuant to which the Participants have agreed to share certain costs and expenses related to the dispute among Alabama, Florida, and Georgia regarding the respective water rights of those states, all as more particularly described in the Technical Services Agreement; and

WHEREAS, the City and the other Participants deem it to be in their individual and collective best interests to transfer the funds being held by ARC in the Pre-Contract Account into the account held by ARC under the Technical Assistance Agreement (the "Technical Assistance Account"); and

WHEREAS, the City, ARC, and the other Participants wish to further amend the Service Agreement to accomplish the aforesaid transfer of funds; and

WHEREAS, the City's anticipated balance as of September 30, 2009 is \$853,005.00 and AFCWRC's anticipated balance as of September 30, 2009 is \$788,374.00.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES, that the Mayor is authorized to enter into Third Amendment of Agreement for River/Lake Management Services to transfer its remaining balances in ARC's Pre-Contract Account to ARC's Technical Assistance Account.

BE IT FURTHER RESOLVED, that AFCWRC is authorized to enter Third Amendment of Agreement for River/Lake Management Services to transfer its remaining balances in ARC's Pre-Contract Account to ARC's Technical Assistance Account.

BE IT FURTHER RESOLVED, that the City Attorney is directed to prepare an appropriate Agreement, substantially in the form of the draft Agreement attached as Exhibit "A," for execution by the Mayor.

BE IT FINALLY RESOLVED, that this Agreement will not become binding on the City, and the City will incur no obligation or liability under it until it has been approved as to form by the City Attorney, executed by the Mayor, attested to by the Municipal Clerk, and delivered to ARC.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities Committee

Caption: A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE THIRD AMENDMENT OF AGREEMENT FOR RIVER/LAKE MANAGEMENT SERVICES FC-6005008018, TO TRANSFER ALL MONIES HELD BY THE ATLANTA REGIONAL COMMISSION IN A PRE-CONTRACT ACCOUNT AND COLLECTED UNDER SAID AGREEMENT TO THE TECHNICAL ASSISTANCE ACCOUNT ADMINISTERED BY THE ATLANTA REGIONAL COMMISSION, AND FOR OTHER PURPOSES.

Council Meeting Date: December 7, 2009

Requesting Dept.: Department of Watershed Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.

The purpose of this legislation is to authorize the transfer of funds from one account administered by the Atlanta Regional Commission (ARC) for management services to another account administered by the ARC for technical assistance. The account from which funds are being transferred is the Pre-Contract Account established by ARC under the Agreement for River/Lake Management Services which has since been nullified by the U.S Court of Appeals, District of Columbia Circuit. The recipient account is the Technical Assistance Account established by ARC under the Intergovernmental Cost Sharing Agreement for Technical Assistance on matters related to the Tri-State Water Rights Litigation and related negotiations and other activities.

2. Please provide background information regarding this legislation.

ARC needs additional monies to fund technical assistance activities related to the Tri-State Water Rights Litigation and related negotiations and other activities for the time period December 1, 2009 – June 30, 2010. Because ARC has already collected funds under the Agreement for River/Lake Management Services that has since been nullified by U.S Court of Appeals, District of Columbia Circuit, it is in the best interests of the City to simply transfer monies into the Technical Assistance Account under the Intergovernmental Cost Sharing Agreement for Technical Assistance.

3. If Applicable/Known:

- (a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** Intergovernmental Agreement
- (b) **Source Selection:**
- (c) **Bids/Proposals Due:**
- (d) **Invitations Issued:**
- (e) **Number of Bids:**
- (f) **Proposals Received:**
- (g) **Bidders/Proponents:**
- (h) **Term of Contract:** Transfer to be completed by December 31, 2009.

4. Fund Account Center (Ex. Name and number): N/A

Fund: _____ **Account:** _____ **Center:** _____

5. Source of Funds: Example: Local Assistance Grant : Original source of funds was Water and Wastewater Revenue Fund. However no new funds will be collected from the City to implement this amendment to an intergovernmental agreement.

6. Fiscal Impact: No new funds will be needed to implement this amendment to an intergovernmental agreement.

7. Method of Cost Recovery:

This Legislative Request Form Was Prepared By: Marc Goncher, Senior Assistant City Attorney

Exhibit "A"

THIRD AMENDMENT OF AGREEMENT FOR RIVER/LAKE MANAGEMENT SERVICES

THIS THIRD AMENDMENT, made and entered into as of the ____ day of _____, 2009, by and among the ATLANTA REGIONAL COMMISSION (hereinafter referred to as "ARC"); the CITY OF ATLANTA (hereinafter referred to as "Atlanta"); the ATLANTA-FULTON COUNTY WATER RESOURCES COMMISSION, a joint venture of the City of Atlanta and Fulton County (hereinafter referred to as "AFWRC"); COBB COUNTY-MARIETTA WATER AUTHORITY (hereinafter referred to as "CCMWA"); and DEKALB COUNTY (hereinafter referred to as "DeKalb"). (Atlanta, AFWRC, CCMWA, and DeKalb are sometimes hereinafter referred to collectively as the "Participants" and individually as a "Participant".)

WITNESSETH:

WHEREAS, ARC and the Participants have previously entered into an Agreement for River/Lake Management Services, which was most recently renewed on January 1, 2001 (the "Service Agreement"), under which ARC was appointed to serve as agent for the Participants to facilitate the release of water from Lake Lanier and Morgan Falls Dam to enable the withdrawal of water from the Chattahoochee River by the Participants for municipal and industrial water supply purposes, such activities being referred to in the Service Agreement as the "project"; and

WHEREAS, the Service Agreement was amended as of January 1, 2003 (the "First Amendment"), and was further amended as of July 1, 2005 (the "Second Amendment"); and

WHEREAS, as more fully described in Paragraph 6 of the First Amendment, the Participants since 2003 have been making certain "Pre-Contract" payments to ARC in order to fund, in part, the Settlement Agreement more particularly described in the First Amendment; and

WHEREAS, ARC has not been required to make water storage payments to the Army Corps of Engineers from funds in the Pre-Contract account (the "Pre-Contract Account") as anticipated; and

WHEREAS, due to a ruling or order of the United States Court of Appeals, District of Columbia Circuit, the Settlement Agreement is now a nullity and the funds in the Pre-Contract Account will never need to be expended as originally anticipated; and

WHEREAS, the Participants are also the Participants pursuant to that certain Intergovernmental Cost Sharing Agreement for Technical Assistance effective January 1, 2007 (the "Technical Assistance Agreement"), pursuant to which the Participants have agreed to share certain costs and expenses related to the dispute among Alabama, Florida, and Georgia regarding the respective water rights of those states, all as more particularly described in the Technical Services Agreement; and

WHEREAS, the Participants deem it to be in their individual and collective best interests to transfer the funds being held by ARC in the Pre-Contract Account into the account held by ARC under the Technical Assistance Agreement (the "Technical Assistance Account"); and

WHEREAS, ARC and the Participants wish to further amend the Service Agreement in order to accomplish the aforesaid transfer of funds.

NOW, THEREFORE, for and in consideration of the premises, the parties hereto agree that the Service Agreement is hereby amended and modified in the following respects:

1. The Participants hereby authorize and direct ARC to transfer all moneys held by ARC in the Pre-Contract Account into the Technical Assistance Account. ARC may transfer the funds at anytime from and after September 30, 2009.

2. The Participants acknowledge that under the Service Agreement each Participant is required to pay on a quarterly basis an amount which varies depending upon the quantity of water withdrawn during that quarter. The Participants further acknowledge that for some time ARC has not been billing the Participants for such withdrawals but, rather, has been drawing down funds in the Pre-Contract Account instead. Thus, the balance in the Pre-Contract Account has been reduced accordingly. The Participants also acknowledge, however, that additional variable quarterly payments may be required for the remainder of calendar year 2009. Consequently, the balance of funds in the Pre-Contract Account will be decreased by any variable amounts due to the Army Corps of Engineers and will be increased by the amount of any variable payments received from the Participants. Therefore, the Participants and ARC understand and acknowledge that the funds in the Pre-Contract Account to be transferred will be net of any variable payments due to the Army and any additional variable payments made by the Participants to ARC. Anticipated balances as of September 30, 2009 are:

Atlanta	-	\$853,005
AFWRC	-	\$788,374
CCMWA	-	\$833,082
DeKalb	-	\$843,916

ARC will calculate actual account balances for each Participant as of September 30, 2009, and a separate report showing such balances will be provided to Participants by ARC once transfers are complete.

The Participants further acknowledge and agree that future variable payments based on usage may be required by the Army Corps of Engineers. The Participants agree that ARC will bill these future variable payments to the Participants separately as they occur and that these charges will be paid promptly upon receipt of an invoice from ARC.

3. The transfer of all funds described herein shall be completed no later than December 31, 2009; however, ARC need not transfer all of the funds at once, but shall be authorized to transfer the funds from time to time and in such amounts as ARC shall deem

advisable, taking into consideration the funding needs under the Technical Assistance Agreement and the obligations to the Army under the Services Agreement.

4. Except as hereinabove modified or amended, the terms and conditions of the Service Agreement are hereby reaffirmed and ratified and shall remain in full force and effect.

5. The parties hereto understand and agree that this amendment may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by and through their duly authorized representatives as of the day and year first above written.

Counterpart 1 of 5 to Third Amendment of Agreement for River/Lake Management Services.

ATLANTA REGIONAL COMMISSION

Attest:

Director

Chair

Counterpart 2 of 5 to Third Amendment of Agreement for River/Lake Management Services.

Witness:

CITY OF ATLANTA

Municipal Clerk

Shirley Franklin, Mayor (Seal)

Approved as to Form:

Recommended:

City Attorney

Commissioner, Department of
Watershed Management

Approved:

Chief Financial Officer

Chief Operating Officer

Counterpart 3 of 5 to Third Amendment of Agreement for River/Lake Management Services.

COBB COUNTY-MARIETTA WATER AUTHORITY

Chairman

Approved as to form:

Attest:

Attorney

Title:

Counterpart 4 of 5 to Third Amendment of Agreement for River/Lake Management Services.

DEKALB COUNTY, GEORGIA

Burrell Ellis
Chief Executive Officer
DeKalb County, Georgia

Attest:

Barbara Sanders
Clerk of the
Chief Executive Officer
And Board of Commissioners
Of DeKalb County, Georgia

Approved as to Substance:

Director

Approved as to Form:

County Attorney

Counterpart 5 of 5 to Third Amendment of Agreement for River/Lake Management Services.

ATLANTA-FULTON COUNTY WATER
RESOURCES COMMISSION

Chairman

Attest:

Title:

Approved as to Form:

Attest:

General Manager

Notary Public (Seal)

My Commission Expires: _____

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: _____ Maisha L. Wood _____

Contact Number: _____ (404) 330-6887 _____

Originating Department: _____ Department of Watershed Management _____
Committee(s) of Purview: _____ City Utilities Committee _____

Chief of Staff Deadline: _____ November 17, 2009 _____

Anticipated Committee Meeting Date(s): _____ December 1, 2009 _____

Anticipated Full Council Date: _____ December 7, 2009 _____

Legislative Counsel's Signature: _____ *Manuel* _____

Commissioner Signature: _____ *Robert J. Hunter* ^{scd} _____

Chief Procurement Officer Signature: _____ *[Signature]* n/a ☒ _____

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE THIRD AMENDMENT OF AGREEMENT FOR RIVER/LAKE MANAGEMENT SERVICES FC-6005008018, TO TRANSFER ALL MONIES HELD BY THE ATLANTA REGIONAL COMMISSION IN A PRE-CONTRACT ACCOUNT AND COLLECTED UNDER SAID AGREEMENT TO THE TECHNICAL ASSISTANCE ACCOUNT ADMINISTERED BY THE ATLANTA REGIONAL COMMISSION, AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any): n/a

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: _____ Reviewed by: _____
(date) (date)

Submitted to Council: _____ (date)